

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 28049 of 2005(L)

AGAINST THE ORDER DATED 08/09/2005 IN IA.1215/05 IN
OS.327/2004 of PRL.MUNSIFF, KASARAGOD

.....

PETITIONER:

1. VEEROJI, AGED ABOUT 45 YEARS,
S/O.DRUGOJI RAO, HINDU, COOLIE, R/AT
MATADKE IN ADHUR VILLAGE OF KASARAGOD TALUK &
DISTRICT, P.O.KUNTAR.
2. VEDAVATHI, AGED 35 YEARS,
W/O.VEEROJI, HINDU, HOUSEHOLD BY PROFESSION
AND R/AT MATADKA IN ADHUR VILLAGE OF KASARAGOD
TALUK AND DISTRICT, P.O.KUNTAR.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENT:

REVATHI, AGED 61 YEARS,
D/O.LATE HEMOJI AND W/O.LATE DEVOJI RAO,
HINDU, AGRICULTURIST, R/AT MATADKA IN ADHUR
VILLAGE OF KASARAGOD TALUK AND DISTRICT,
P.O.KUNTAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE, J.

.....
W.P.(C)No.28049 OF 2005
.....

DATED THIS THE 18TH JUNE, 2007

J U D G M E N T

Ext.P5 order by which the application submitted by the petitioners to remit the advocate commissioner's report is under challenge in this Writ Petition under Article 227 of the Constitution.

2. Even though the respondent was served with notice, she has not come forward to resist the application.

3. Under the impugned order itself, the learned Munsiff finds that the commissioner has not properly answered the objections of the respondents (petitioners herein) regarding the nature and character of the road or regarding the objection that it was the only ingress and egress to the house plot of the defendants. The learned Munsiff has also stated that though it is stated in the report that the defendants' property is marked in the plan, the same is not actually seen in the plan and therefore the objections raised by the defendants-petitioners to the plan and report appear to be valid. Though it was so found by the learned Munsiff, the learned Munsiff did not allow the application on the reason that the commissioner has identified the road leading to the house of the defendants as one falling outside A-schedule property and that the plan shows the road and the property of the plaintiff as

separated by fence. Therefore, according to the learned Munsiff, the question whether the defendants are having any right of easement over the road does not arise at all for consideration in the present suit since the road does not pass through A-schedule property.

4. Mr.T.Sethumadhavan, counsel for the petitioners would submit that the properties in Sy.No.627/1C and 632/3B were incorporated in the plaint schedule only through an application for amendment submitted after the commissioner's report was available. So also, according to the learned counsel, the plan does not show the existence of any fence separating the property of the plaintiff from the road in question.

5. Considering the above submissions, I am of the view that to have a correct decision of the controversial issue in this case, it is necessary that the commissioner's report is remitted to the commissioner so that a report will be available on the aspects mentioned in the objections (work memo submitted by the petitioners). I set aside Ext.P5 and allow I.A.No.1215/05. All expenses for the further work to be done by the commissioner shall be borne by the petitioners. Both sides shall be given opportunity to submit further work memos before the commissioner. As far as

possible, the same commissioner will be appointed.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl

WP(C)N0.28049/05